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In The
Supreme Court of the United States

OCTOBER TERM, 19___

No. 683

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

versus

SAMUEL W. ODOM,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

T. K. JACKSON, JR.
The Merchants National Bank Building
Mobile, Alabama
Counsel for Petitioner

W. BOYD REEVES
Armbrecht, Jackson, McConnell & DeMouy
The Merchants National Bank Building
Mobile, Alabama
Of Counsel

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In The
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No. _____

WATERMAN STEAMSHIP CORPORATION,
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versus

SAMUEL W. ODOM,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner, WATERMAN STEAMSHIP CORPORATION, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fifth Circuit, reversing a decree in admiralty rendered by the United States District Court for the Southern District of Alabama in Petitioner's favor.

OPINIONS BELOW

The District Court entered an order on August 20, 1962 (R. 16) dismissing the Respondent's libel and said order is not reported. The opinion of the Court of Appeals (R. 27-28), printed in Appendix A hereto (pp. 12, 13), is reported in 322 F.2d 1022.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on October 15, 1963, (R. 29) and is printed in Appendix B hereto (pp. 14, 15). On November 19, 1963, Petitioner filed with the Court of Appeals an application for a stay of mandate within which to make application to this Honorable Court for a writ of certiorari, and on November 22, 1963, the Court of Appeals granted a stay of mandate for thirty (30) days from date of such order, which order is printed in Appendix C hereto (pp. 16, 17).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether the analogous state statute of limitations of the place where the cause is filed or the three-year statute of limitations of the Jones Act is the appropriate statutory limitation period to be applied in determining the question of laches in an admiralty action brought by a longshoreman for mari-

time injuries sustained by reason of unseaworthiness or negligence of a vessel?

2. What is the appropriate analogous statutory limitation period to be applied in determining laches in an admiralty action brought by a shore-based worker for maritime injuries?

STATUTES INVOLVED

The statute involved is 46 U.S.C. § 688, the Jones Act, which incorporates 45 U.S.C. § 56. These statutes are printed in Appendices E and F hereto (pp. 25, 26).

STATEMENT

The basis of federal jurisdiction in the court of first instance, the United States District Court for the Southern District of Alabama, is that this is a case of admiralty and maritime jurisdiction under 28 U.S.C. § 1333 (1).

On March 27, 1962, the Respondent, Samuel W. Odom, filed his libel against Petitioner, Waterman Steamship Corporation, and THE S. S. MONARCH OF THE SEAS, seeking the recovery of damages for personal injuries allegedly sustained onboard the said vessel in the Port of Mobile, Alabama, on August 25, 1959, while working as a longshoreman in the employ of Ryan Stevedoring Company (R. 1-6).

Petitioner filed timely exceptions to the libel

(R. 6-8) on the grounds, among others, that it affirmatively appeared on the face of the libel that the claim presented therein was barred by the laches of the Respondent in that the alleged injury occurred on August 25, 1959, and the libel, having been filed on March 27, 1962, was not filed within the analogous one (1) year statute of limitations of the State of Alabama. The exceptions further set forth that no reason or excuse for the delay was alleged in the libel (R. 6-8).

Subsequent to the filing of the exceptions, and prior to oral argument thereon, the Respondent amended the libel and alleged, in addition to certain facts attempting to negate prejudice to the Petitioner, that " . . . . the delay, if any, which occurred before Libelant filed suit against Respondent was excusable" (R. 8).

Petitioner re-filed its exceptions to the libel, as amended, on the separate and several grounds set forth in the exceptions to the original libel (R. 10). The District Court sustained the Petitioner's exceptions, and in its order, gave Respondent ten (10) days within which to amend (R. 11, 12). Respondent filed a motion requesting additional time within which to amend (R. 12), which motion was granted by the District Court (R. 13). Respondent failed to amend, and then moved the District Court for a final order dismissing his libel (R. 15, 16), which motion was granted (R. 16).

Thereafter, the Respondent appealed to the Fifth Circuit Court of Appeals. While the appeal of this case was pending, the Fifth Circuit Court of Appeals

rendered its opinion of *Flowers v. Savannah Machine & Foundry Co.*, (5 Cir., 1962) 310 F.2d 135, wherein said Court held that the appropriate analogous statutory period to be applied in determining the question of laches in an admiralty action brought by a shore-based worker to recover for maritime injuries caused by negligence or unseaworthiness or both was the three-year limitation period of the Jones Act, 46 U.S.C. § 688, which incorporates 45 U.S.C. § 56, rather than the analogous state statutory period. The opinion of the Court of Appeals in *Flowers v. Savannah Machine & Foundry Co., supra*, is printed in Appendix D hereto (pp. 18-24).

The Court of Appeals held that the factual situation presented in the instant case was not materially different from that which was present in *Flowers v. Savannah Machine & Foundry Co., supra*, and adhered to that decision in reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The decisions of the Fifth Circuit Court of Appeals in the instant case and in *Flowers v. Savannah Machine & Foundry Co.*, 310 F.2d 135 (Appendix D, *infra* (pp. 18-24), upon the authority of which the instant case was decided, are in direct conflict with the decisions of every other Federal Circuit Court of Appeals which has had occasion to rule on the question here presented, and said decisions also conflict in principle with the decisions of this Court.

1. Prior to the Fifth Circuit's rulings in the instant case and in the *Flowers* case, all of the Circuit Courts of Appeals, including the Fifth Circuit, adhered to the well-established doctrine that the analogous statute of limitations to be applied in determining the question of laches in an admiralty action brought by a shore-based worker to recover for maritime injuries allegedly caused by negligence or unseaworthiness or both is the analogous state statute of limitations of the place where the suit is filed. In a complete departure from this doctrine, the Fifth Circuit Court of Appeals held in the instant case, and in *Flowers*, that the analogous statute of limitations to be applied in this type of case is the three-year statute of limitations of the Jones Act (46 U.S.C. § 688, which incorporates 45 U.S.C. § 56).

The Fifth Circuit's novel ruling clearly conflicts with the Second Circuit Court of Appeals case of *Oroz v. American President Lines, Ltd.*, (2 Cir., 1958) 259 F.2d 636, certiorari denied 359 U.S. 908. In that case, a longshoreman's third party action, the court said, 259 F.2d at 639:

> "Although laches is the proper measure of limitation, *it has long been settled doctrine that, in deciding whether maritime claimes are barred by laches, courts of admiralty will use local limitation statutes as a rule-of-thumb as to the presence or absence of prejudice and inexcusable delay*. If the statute has run, prejudice by reason of inexcusable delay is presumed in the ab-

> sence of a showing to the contrary: if it has not run, the converse is inferred. Redman v. United States, 2 Cir., 1949, 176 F.2d 713; Kane v. Union of Soviet Socialist Republics, 3 Cir., 1951, 189 F.2d 303, certiorari denied 342 U.S. 903, 72 S.Ct. 292, 96 L.Ed. 676; Wilson v. Northwest Marine Iron Works, 9 Cir., 1954, 212 F.2d 510." (Emphasis added).

To the same effect are the Second Circuit decisions of *Redman v. United States*, (2 Cir., 1949) 176 F.2d 713, and 185 F.2d 553 (1950); *LeGate v. The Panamola*, (2 Cir., 1955) 221 F.2d 689; and *Larios v. Victory Carriers, Inc.*, (2 Cir., 1963) 316 F.2d 63 (seaman's action).

The "settled doctrine", referred to in the *Oroz* case, *supra*., that the analogous state limitation period applies in determining the question of laches in an action brought by a shore-based worker for maritime injuries, is also the prevailing rule in the First, Third, and Ninth Circuit Courts of Appeals. *Guerrido v. Alcoa Steamship Co., Inc.*, (1 Cir., 1956) 234 F.2d 349, 358; *Kane v. Union of Soviet Socialist Republics*, (3 Cir., 1951) 189 F.2d 303, 305; *Wilson v. Northwest Marine Iron Works*, (9 Cir., 1954) 212 F.2d 510, 511. This doctrine has also been followed by a district court in the Fourth Circuit in the well-reasoned case of *Dawson v. Fernley & Eger*, (E.D., Va., 1961) 196 F.Supp. 816, 822.

The decision of the court below is also in conflict with its own prior decisions on the identical

issue. *Vega v. The Malula*, (5 Cir., 1961) 291 F.2d 415; *Delgado v. The Malula*, (5 Cir., 1961) 291 F.2d 420; *McDaniel v. Gulf & South American Steamship Co.*, (5 Cir., 1955) 228 F.2d 189; and *Morales v. Moore-McCormack Lines, Inc.*, (5 Cir., 1953) 208 F.2d 218. In each of these cases, all prior to the *Flowers* case, the Fifth Circuit followed the established doctrine of applying the analogous state limitation period in determining laches in actions brought by shore-based workers; in *McConville v. Florida Towing Corporation*, (5 Cir., 1963) 321 F.2d 162, decided subsequent to *Flowers*, the Fifth Circuit again followed the analogous state statute in determining laches in a seaman's maritime action for wages.

Clearly, the issue presented is in dispute and will remain so until settled by this Court.

2. The decision of the court below conflicts in principle with the decisions of this Court. In discussing the question of laches in the admiralty action of *Czaplicki v. SS Hoegh Silvercloud*, 351 U.S. 525, at 533 (1956), this Court said:

> "This does not mean, of course, that the state statutes of limitations are immaterial in determining whether laches is a bar, but it does mean that they are not conclusive, and that the determination should not be made without first considering all the circumstances bearing on the issue."

The doctrine of applying the local limitation pe-

iod in determining the question of laches in a longshoreman's third party action was tacitly recognized by this Court in the recent decision of *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206 (1963). There, it was noted that the analogous statute of limitations of Puerto Rico had run out prior to the time suit was filed; however, it was concluded that the trial court's finding that no prejudice had resulted from the delay was not plainly erroneous.

This Court's decision of *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221 (1958) was relied on by the court below in the case of *Flowers v. Savannah Machine & Foundry Co., supra.*, and in the instant case, for the conclusions reached therein. *McAllister* (a seaman's action) did not reach the question here presented but was confined to the holding that "where an action for unseaworthiness is combined with an action under the Jones Act a court cannot apply to the former a shorter period of limitations than Congress has prescribed for the latter." Certainly there is nothing in this holding to support the Fifth Circuit's deviation from a well-settled federally-created maritime doctrine. Of fundamental importance is the fact that *McAllister* involved a seaman's action while the instant case involves an action by a longshoreman.

3. The holding of the court below is a complete departure from the doctrine of this Court that in a suit to enforce a federally-created right which is silent on the question of limitations, the applicable period of limitations is that prescribed by the law of the state where the action is brought. This doctrine

is set forth in the cases of *Cope v. Anderson*, 331 U.S. 461, 463 (1947); *Holmberg v. Armbrecht*, 327 U.S. 392, 395 (1946); *Raulings v. Ray*, 312 U.S. 96, 97 (1941); *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U.S. 390, 397 (1906); *McClaine v. Rankin*, 197 U.S. 154, 158 (1905), and *Brady v. Daly*, 175 U.S. 148, 158 (1899). Any new doctrine, such as that enunciated by the court below, would require a search to be made in every case of an analogous federal statute of limitations before permitting a state statute to come into play when enforcing a federally-created right.

4. The decision of the court below involves an important question of Federal Maritime Law which affects the entire maritime industry with regard to maritime injuries sustained by shore-based workers. Any new interpretations of maritime law should be fashioned by this Court, and the question here presented should be settled for the guidance of lower courts and the parties whose rights are affected thereby.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted and that the decree of the Court of Appeals should be reversed.

Respectfully submitted,

T. K. JACKSON, JR.
Counsel for Petitioner

W. Boyd Reeves
Armbrecht, Jackson, McConnell & DeMouy
1101 Merchants National Bank Building
Mobile, Alabama

Of Counsel

APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20106

SAMUEL W. ODOM,

Appellant,

versus

THE S. S. MONARCH OF THE SEAS, her boilers, engines, tackle, apparel and furniture, and WATERMAN STEAMSHIP CORPORATION,

Appellees.

Appeal from the United States District Court for the Southern District of Alabama.

(October 15, 1963.)

Before RIVES and JONES, Circuit Judges, and DAWKINS, JR., District Judge.

PER CURIAM: Since the entry of the judgment of the district court from which this appeal was taken, this Court decided the case of *Flowers v. Savannah Machine & Foundry Co.*, 5th Cir. 1962, 310 F.2d 135. The factual situation here presented is not materially different from that which was present in Flowers. We adhere to the decision there made with the result that the judgment of the district court must be reversed and the cause remanded.

REVERSED AND REMANDED.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By: s Clara R. James
Deputy

New Orleans, Louisiana NOV 20 1963

(SEAL)

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20106

D. C. Docket No. 2929 Admiralty

SAMUEL W. ODOM

Appellant,

versus

THE S. S. MONARCH OF THE SEAS, her boilers, engines, tackle, apparel and furniture, and WATERMAN STEAMSHIP CORPORATION,

Appellees.

Appeal from the United States District Court for the Southern District of Alabama

(October 15, 1963)

Before RIVES and JONES, Circuit Judges, and DAWKINS, JR., District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court in accordance with the opinion of this Court.

It is further ordered and adjudged that the appellees, The S. S. Monarch of the Seas, her boilers, engines, tackle, apparel and furniture, and Waterman Steamship Corporation, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 15, 1963

Issued as Mandate:

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

Samuel W. Odom

Appellant,

versus

NO. 20106

THE S. S. MONARCH OF THE SEAS, her boilers, engines, tackle, apparel and furniture, and WATERMAN STEAMSHIP CORPORATION

Appellee.

ON CONSIDERATION OF THE APPLICATION of the Appellees in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this Court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition and record

have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above mentioned certificate shall be filed with the clerk of this Court within that time.

DONE AT NEW ORLEANS, LA., THIS 22nd day of November, 19.....

/s/ WARREN L. JONES

UNITED STATES CIRCUIT JUDGE

(ORIGINAL FILED - NOVEMBER 22, 1963)

APPENDIX D

(310 F.2d 135–139)

Ralph O. FLOWERS, Appellant

v.

SAVANNAH MACHINE & FOUNDRY CO. et al., Appellees.
No. 19480

United States Court of Appeals
Fifth Circuit.
Nov. 21, 1962.
Rehearings Denied Dec. 27, 1962.

* * * * *

Before TUTTLE, Chief Judge, BROWN, Circuit Judge, and JOHNSON, District Judge.

JOHN R. BROWN, Circuit Judge.

This case presents the question as to the appropriate statutory limitation period to be applied in determining laches in an admiralty action brought by a shore worker as a vicarious seaman against a vessel or her owners to recover for maritime injuries caused by negligence or unseaworthiness or both.[1]

1. Esso urges that the appeal is not timely. The decree dismissing the libel was entered July 26, 1961. On September 27, 1961, libelant filed a petition for rehearing. Before the petition for rehearing was determined, libelant filed a Notice of Appeal October 18, 1961. There is no express rule permitting a petition

(Continued)

The District Court adopted the local state, Georgia, limitation of two years. The Judge rejected the contention that the most appropriate analogy was the three-year period under the Jones Act, 46 U.S.C.A. §688.[2] Once the Georgia law was chosen, the Court, presumably applying the principles which we have discussed in numerous cases[3] held that the libelant had failed to establish that the delay was excusable, or that no prejudice resulted. We do not reach this problem since we conclude that the Jones Act three-year period should be employed.[4]

for rehearing in admiralty and no local rule in the Southern District of Georgia. The appellee argues that on the principle of Napier v. Delaware, Lackawanna & Western Railroad Co., 2 Cir., 1955, 223 F.2d 28, the petition for rehearing, like a motion for new trial, suspends the original judgment so that the Notice of Appeal given on October 18, 1961, while the petition remained undetermined was a nullity. See also Phinney v. Houston Oil Field Material Company, 5 Cir., 1958, 252 F.2d 357. Assuming that the principle in Ribaudo v. Citizens National Bank, Orlando, 5 Cir., 1958, 261 F.2d 929, is applicable that the time for appeal begins to run from the date the petition for rehearing is denied and not from the date of the original judgment, the supplemental record reflects that unlike that case, the District Judge here refused to "entertain" the petition for rehearing. The formal order expressly stated that "said petition for rehearing as hereto be denied and ordered stricken" as not timely filed. The notice of appeal was therefore timely and the appeal is properly before us.

2. This incorporates 45 USCA Sec. 56.

3. Vega v. The Maluia, 5 Cir., 1961, 291 F.2d 415, 1961 AMC 1698; Delgado v. The Maluia, 5 Cir., 1961, 291 F.2d 420, 1961 AMC 1706; McDaniel v. Gulf & South American Steamship Co., 5 Cir., 1955, 228 F.2d 189, 1956 AMC 105; Morales v. Moore-McCormack Lines, 5 Cir., 1953, 208 F.2d 218, 1954 AMC 87; Point Landing, Inc. v. Alabama Drydock and Shipbuilding Co., 5 Cir., 1958, 261 F.2d 801, 1959 AMC 148.

4. Whether laches exists is ordinarily presented when the delay in filing exceeds the analogous statutory limitation period. We do not undertake to determine whether, or under what circumstances, delay short of the statutory period might properly amount to laches.

For our purposes the claim may be simply stated. The libel was filed on April 8, 1960, against the Shipyard[5] and the vessel owner. The libel alleged that while performing his duties as an employee of a subcontractor then engaged in carrying out certain maintenance or repair work for the Shipyard aboard the SS Esso Scranton on May 23, 1957, the libelant sustained injuries when he slipped "upon some oil and/or grease or other foreign substance." By exceptions the respondents each urged that the libel was barred by laches under the Georgia two-year period. Georgia Code Ann. § 3-1004. These pleadings and supporting affidavits set forth a number of circumstances which cast considerable doubt on the intrinsic merits of this claim. These included the successful prosecution of a Georgia Workmen's Compensation claim for a back injury admittedly occurring ashore about a week prior to the alleged injury here. More significant was the fact that just two months before the filing of the instant suit, the libelant had filed on February 8, 1960, a sworn libel against the owners of another vessel to recover for the very same injuries allegedly occuring under the very same circumstances. This was dismissed on the eve of the filing of the libel naming the SS Esso Scranton. But in the view we take of the case, we do not at this time evaluate either the inferences urged to be drawn, or their significance.

Thus, in its simplest outline, the problem is posed whether in an admiralty third party suit against a vessel owner by one having the judicially recognized status to assert the rights of a seaman, the analogous limitation period should be the local law (two years in Georgia) or the Jones Act (three years).

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[5] Savannah Machine & Foundry Co.

We find ourselves in substantial agreement with the opinions of Judge Wright now of the Circuit Court of Appeals for the District of Columbia, but written by him while a District Judge in this Circuit. Daniels v. States Marine Corp., E.D.La., 1960, 184 F.Supp. 815, 1961 AMC 1203; and Seals v. States Marine Lines, E.D.La., 1960, 188 F.Supp. 398. In so doing, we reject, of course, the contrary conclusions reached by Judge Hoffman in Dawson v. Fernley & Eger, E.D.Va., 1961, 196 F.Supp. 816, which, in turn, analyzed and then rejected Judge Wright's decisions.

Of course it must be recognized at the outset that this does not displace the doctrine of laches. What and all that is done is that in the place of the local statutory period, there is substituted as the analogous reference guide the Jones Act three-year period. But while this does not eliminate the unavoidable problems for case-by-case adjudication and, moreover, does not achieve the millennium of certitude in this troublesome amphibious area, we think that adoption of the federal statute is both more workable and sensible. And in this rapidly developing field[6] there is ample basis for adopting this standard at the present time.

Pointing in the direction that it is not too late to make these adaptions is McAllister v. Magnolia Petroleum Co., 1958, 357 U.S. 221, 78 S.Ct. 1201, 2 L.Ed.2d 1272, 1958 AMC 1754. There for a pure, not a *Sieracki*-seaman, the Court held that for an action based on the general maritime law for unseaworthiness when joined in a suit for damages under the Jones Act, the applic-

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6. See, Baer, At Sea With The United States Supreme Court, 38 N.C.L. Rev. 307 (1960); Currie, Federalism and Admiralty, The Devil's Own Mess, 1960, The Supreme Court Review 158.

able reference guide for laches was the three-year Jones Act period, not the forum state statute. Obviously there are many distinguishing factors. That case is not our case. Thus, it is possible to read that case as a solution to a specific narrow problem generated by the impact of res judicata under Baltimore Steamship Co. v. Phillips, 1927, 274 U.S. 316, 47 S.Ct. 600, 71 L.Ed. 1069, 1927 AMC 946. Admittedly we do not have that problem here. But we think McAllister stands for more than that. It affirms that in giving effectual enforcement to court-created principles bearing upon enforcement of court-created rights, there can be alteration and adaption through court decision as occasion demands.

In this respect one thing is very, very, clear: local law is now completely irrelevant to substantive rights concerning a maritime injury at least short of death.[7] The standing of a transitory shore-based worker as a vicarious seaman and the nature of the duty owed are established as federal maritime law. Seas Shipping Co. v. Sieracki, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099, 1946 AMC 698. So much so is this that contributory negligence and similar defenses which would bar all recovery had the identical occurrence taken place a few feet away on the dock are rejected in favor of the maritime notion of comparative fault.[8] Pope & Talbot,

7. As to death cases the sea is murky. See, Thibodeaux v. J. Ray McDermott & Co., 5 Cir., 1960, 276 F.2d 42, see note 6 at 47, 1961 AMC 1469, and also Emerson v. Holloway Concrete Products Co., Inc., 5 Cir., 1960, 282 F.2d 271, 1961 AMC 1923 at notes 9, 10, 11, p. 281. (Dissenting Opinion).

8. This perhaps even represented an importation from the Jones Act's standard of comparative fault since the admiralty rule of mutual fault, at least at that date, called only for a 50/50 split. Cf. Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 1952, 342 U.S. 282, 72 S.Ct. 277, 96 L.Ed. 318, 1952 AMC 1, and see Southport Transit Co. v. Avondale Marine Ways, Inc., 5 Cir., 1956, 234 F.2d 947, notes 2 and 3, p. 949 and p. 951, 1956 AMC 1498.

Inc. v. Hawn, 1953, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143, 1953 AMC 1314. And now, whether the case is in the federal court on the law side or the admiralty side or in a state court, federal maritime standards are solely controlling. "Whatever doubt may once have existed on that score was effectively laid to rest by Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410–411, 74 S.Ct. 202, 98 L.Ed. 143." Kermarec v. Compagnie Generale Transatlantique, 1959, 358 U.S. 625, 628, 79 S.Ct. 406, 3 L.Ed.2d 550, 1959 AMC 597.

What is left for local law? There is nothing left save an occasional use as a reference guide in determining whether the maritime principle of laches bars the suit. And even here it is wholly fortuitous depending on where the suit is brought—whether in the state in which the accident occurred, or elsewhere—and on the choice-of-law rules, statutory or judge-made, of the forum state. As we have said, certitude and ease in the adjudication of claims for injury to workers in this ambiguous, amphibious area is too much to hope for. But the continued reliance as a matter of judge made law on local statute of limitations as the reference guide does more than create administrative problems of great difficulty. In an area now clearly one for federal supremacy in substantive rights, it produces variable results, depending upon the wholly fortuitous, but otherwise irrelevant, local limitation statute.[9] This is itself to impede that essential uniformity of the admiralty which is at the heart of all of this troublesome litigation.

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9. This is illustrated by the limitation periods in the six maritime states comprising this Circuit. They run all the way from Louisiana's one-year prescription on the right, Louisiana Stat. Ann. — Civil Code art. 3536, to six years in Mississippi, Mississippi Rev. Code § 722 (1942). (Continued)

Of course, the *Sieracki*-seaman is not a real full-fledged seaman for all purposes. He has, for example, no claim for the traditional right to maintenance, wages and cure. But the law reasons that in doing the work essentially that of a seaman who is a regular crew member, such vicarious seamen are entitled to comparable, if not identical, protection and sanctions.[10] In that approach, it is a mistake to assume, as the respondents argue, that the enactment in 1927 of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. § 901 et seq., erased the broad principles expressed in International Stevedoring Co. v. Haverty, 1926, 272 U.S. 50, 47 S.Ct. 19, 71 L.Ed. 147, 1926 AMC 1638. Indeed, Sieracki declared that such a "* * * view cannot be accepted," 328 U.S. 85, 101, 66 S.Ct. 872, 90 L.Ed. 1099.

Since the District Court used the Georgia two-year period as the guideline, and we now hold that for this type of case, the Jones Act three-year period is to be used by analogy, the cause must be reversed and remanded for further and other consistent proceedings.

Reversed and remanded.

(Continued)

Complications and opportunities for judge-made hardship are multiplied by the fact that several principal waterways constitute the boundary line between states. And to this must now be added the problems from offshore operations in areas in or short of the outer continental shelf and the projected state lines asserted by contiguous states. See Guess v. Read, 5 Cir., 1961, 290 F.2d 622, 1961 AMC 1413; Pure Oil Co. v. Snipes, 5 Cir., 1961, 293 F.2d 60, 1961 AMC 1651.

10. We do not at this time determine whether libelant has this vicarious seaman's status.

APPENDIX E

46 U.S.C. Section 688

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007."

APPENDIX F

45 U.S.C. Section 56

"No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a

district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the several states. . . ."

PROOF OF SERVICE

I, T. K. JACKSON, JR., the attorney for the Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of December, 1963, I served a copy of the foregoing Petition for a Writ of Certiorari to the United States Fifth Circuit Court of Appeals on Samuel W. Odom, Respondent herein, by mailing a copy of the same in a duly addressed envelope, with first class postage prepaid, to Hon. Michael J. Salmon, attorney for the Respondent, at his office address 803 Van Antwerp Building, Mobile, Alabama.

T. K. JACKSON, JR.
Counsel for Petitioner
1101 Merchants National Bank Building
Mobile, Alabama

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 ___

No. 683

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

versus

SAMUEL W. ODOM,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Michael J. Salmon
415 Van Antwerp Building
Mobile, Alabama

Counsel for Respondent

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CITATIONS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 ___

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

versus

SAMUEL W. ODOM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, SAMUEL W. ODOM, respectfully submits his brief in opposition to Petitioner's Writ of Certiorari seeking review by this Court of a judgment of the United States Court of Appeals for the Fifth Circuit, reversing a decree in Admiralty rend-

ered by the United States District Court for the Southern District of Alabama in Petitioner's favor.

Respondent is satisfied with the presentation of OPINIONS BELOW, JURISDICTION, QUESTIONS PRESENTED, and STATUTES INVOLVED, as set forth in the Petition of Waterman Steamship Corporation, Petitioner.

STATEMENT

Respondent concurs in the statement of the case as set forth in the Petition of Petitioner for Writ of Certitorari and makes no additions thereto or corrections thereof.

REASONS FOR REFUSING THE WRIT

The issue in the present case is of such limited breadth that it falls far short of meriting review by this Court on certiorari. it concerns only the question of what limitation statute shall be used by a court of admiralty as a rule of thumb in deciding the presence or absence of prejudice and inexcusable delay so as to determine whether a particular maritime claim is or is not barred by laches.

The decision of the Court of Appeals is clearly correct. Further, there is no conflict upon the decision presented in this case nor does it present any important question of Federal law requiring consideration and decision by this Court.

1. The decision below is clearly correct.

The Court of Appeals' ruling in the instant case rests upon the case of *Flowers v. Savannah Machine and Foundry Co.*, Fifth Circuit, 1962, 310 F.2d 135 (CA5). In the *Flowers* case, as in the instant case, the Court of Appeals for the Fifth Circuit held that in determining the question of laches in an admiralty action by a shore-based worker for maritime injuries, the most appropriate statute of limitations to be used is the three year statute of limitations of the Jones Act (46 U.S.C. §688, which incorporates 45 U.S.C. §56).

The Court of Appeals in the *Flowers* case found that the application by District courts of local limitation statutes as guides had in the past led to great confusion, noting that within the Fifth Circuit, for instance, such local limitations might range from one to six years. Further, recognizing that the claim concerned was a federally-created right, it arrived at the conclusion that the uniform application of the same three year limitation set forth in the Jones Act, supra, was clearly more appropriate and sensible than the irregular results flowing from reference to varying local statutes of limitation. This analogy of the Jones Act three year period is, of course, a singularly appropriate one since the claim of the shore-based worker is itself analogously derived from the rights of a seaman under the Jones Act.

In arriving at this decision, the Court of Appeals referred to the holding of this Court in *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221 (1958) wherein this Court held in the case of a Jones Act

claim that the application of a state statute of limitations shorter than the three year Federal statute to a claim for unseaworthiness joined with a claim for negligence would deny the claimant the full benefit of the Federal law.

The holding in the *Flowers'* case, supra, and the instant case, that since a seaman is entitled to a three year statute of limitations under his warranty of seaworthiness, it is simply anomalous to hold that a person doing seaman's work, a "Sieracki" seaman, and making a similar claim is not, provides a uniform, workable, and sensible standard, that minimizes the confusion which has ensued from reference to state statutes of limitations.

2. There is no conflict of decision.

The Petitioner asserts that the instant case and the *Flowers'* case are in conflict with all of the Circuit Courts of Appeal and the decisions of this Court. We submit that this assertion is euphemistic. Indeed, no Court of Appeals other than the Fifth Circuit Court of Appeals has ever considered the appropriateness of applying by analogy the Jones Act three year period; in short, the question has never been raised. While a number of Courts of Appeal have referred to the local statutes of limitations to use as a rule of thumb in this determination, this has been in the absence of a suggestion of a better rule, not in spite of the better rule as set forth in the *Flowers'* case and the instant case. We submit that this is not a conflict such as has traditionally been held to warrant review by this Court on certiorari.

3. There is no important question of Federal law.

The issue in this case concerns only whether it is more appropriate to use as a rule of thumb one uniform Federal limitation period, the Jones Act, supra, or several varying local limitations in order to presume the absence or the presence of the elements (prejudice and inexcusable delay) which constitute laches. It is not such a question as should merit review by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Michael J. Salmon

MICHAEL J. SALMON
Counsel for the Respondent

PROOF OF SERVICE

I, MICHAEL J. SALMON, the attorney for the Respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of February, 1964, I served a

copy of the foregoing brief for Respondent in Opposition on Waterman Steamship Corporation, Petitioner herein, by mailing a copy of the same in a duly addressed envelope, with first class postage prepaid, to the Honorable T. K. Jackson, attorney for the Petitioner, at his office address, 1101 Merchants National Bank Building, Mobile, Alabama.

Michael J. Salmon

MICHAEL J. SALMON
Counsel for Respondent
415 Van Antwerp Building
Mobile, Alabama